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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/814,683	03/15/2001	Masaaki Odakura	NIP-226	4294

24956 7590 09/10/2003

MATTINGLY, STANGER & MALUR, P.C.  
1800 DIAGONAL ROAD  
SUITE 370  
ALEXANDRIA, VA 22314

EXAMINER

LUDLOW, JAN M

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 09/10/2003

5

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/814,683

Applicant(s)

ODAKURA ET AL

Examiner

Jan M. Ludlow

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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1. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

i. Arrangement of the Specification

2. As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

3. TITLE OF THE INVENTION.

4. CROSS-REFERENCE TO RELATED APPLICATIONS.

5. STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.

6. INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or

7. REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)

8. BACKGROUND OF THE INVENTION.

9. Field of the Invention.

10. Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.

11. BRIEF SUMMARY OF THE INVENTION.

12. BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).

13. DETAILED DESCRIPTION OF THE INVENTION.

14. CLAIM OR CLAIMS (commencing on a separate sheet).

15. ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).

16. SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

17. The examiner notes that the Brief Description of the Drawings is found after the detailed description. Correction is requested.

18. Claim 8 is objected to because of the following informalities: "the reagent for agitation and regulation" lacks antecedence. Appropriate correction is required.

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19. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

20. A person shall be entitled to a patent unless –

21. (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

22. Claims 1-2, 5-10 rejected under 35 U.S.C. 102(b) as being anticipated by Miyazaki et al.

23. Miyazaki et al teach combining particles and a dispersion agent in an optical cell 2, mixing by vibration of ultrasonic mixer 11 positioned facing the bottom surface of the cell, and analyzing optical properties using light source 1 and detectors 3, 4 positioned at the sides of the cell. Optical signals are sent to a controller during agitation, compared to values stored in memory, and used to control the ultrasonic mixer. Sample is added and the agitation and measurement repeated. (See, e.g., Figure 1, col. 12, line 32 – col. 13, line 33, esp. col. 13, lines 10-15.) With respect to the cell being a prism, it is the examiner's position that an "optical cell" is a cuvette, i.e., encompasses the teaching of a rectangular container providing a flat surface for the light to pass through perpendicularly. With respect to optimal stirring conditions, in that the stored values are the ones that have been selected for comparison, it is the examiner's position that they are optimal for the particular assay, based on some undefined set of criteria.

24. Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miyazake et al as applied to claims 1-2, 5-10 above, and further in view of JP 08-146007 (hereafter JP).

25. Miyazake fails to teach angling the ultrasonic mixer.

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26. JP teaches angling an ultrasonic device with respect to the surface of a cuvette (Figure 4) as an alternative to arranging it perpendicular to the surface (Figs. 2-3, 5-6).

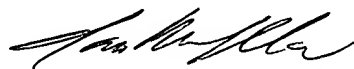
27. It would have been obvious to angle the ultrasonic device in order to provide an art-recognized alternative positioning to perpendicular as taught by JP.

28. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

29. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jan M. Ludlow whose telephone number is (703) 308-4039. The examiner can normally be reached on Monday-Thursday, 11:30 am - 8:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on (703) 308-4037. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Jan M. Ludlow  
Primary Examiner  
Art Unit 1743

jml  
September 8, 2003.